

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

DAVID LUPP, individually and on behalf of
himself and all others similarly situated,

Plaintiff,

-v-

MERCY HEALTH, THE MERCY HEALTH
PARTNERS RETIREMENT PLAN
COMMITTEE, and JOHN DOES 1-20,

Defendants.

JANET WHALEY, et al.,
individually, and on behalf of all others
similarly situated, and on behalf of the
Mercy Health Plans,

Plaintiffs,

-v-

MERCY HEALTH, an Ohio Non-Profit
Corporation, JOHN and JANE DOES 1-20,
MEMBERS OF THE MERCY HEALTH
RETIREMENT PLAN COMMITTEE, each an
individual, and JOHN and JANE DOES 21-40,
each an individual Defendant,

Defendants.

Case No.: 1:16-cv-441

District Judge: Susan J. Dlott

Magistrate Judge: Karen L. Litkovitz

Case No.: 1:16-cv-518

District Judge: Susan J. Dlott

Magistrate Judge: Karen L. Litkovitz

NOTICE OF CONSENT TO CONSOLIDATE ACTIONS

Plaintiffs Janet Whaley, Leslie Beidleman, Patricia K. Blockus, Charles Bork,
Marilyn Gagne, Karl Mauger, Patricia Mauger, Beth Zaworski, and Nancy Zink (hereinafter
"Whaley Plaintiffs"), do not oppose consolidation of their action, captioned "Janet Whaley,

et al., individually, and on behalf of all others similarly situated, and on behalf of the Mercy Health Plans v. Mercy Health, et al.,ö Case No. 1:16-cv-518 (öWhaley Actionö), with the action filed by Plaintiff David Lupp captioned ö*David Lupp, individually and on behalf of himself and all others similarly situated v. Mercy Health, et al.*,ö Case No. 1:16-cv-441 (öLupp Actionö).

The Whaley Plaintiffs agree that consolidation under Fed. R. Civ. P. 42(a) is proper because the actions share common issues of law and factö *e.g.*, whether the Mercy Health plans are öchurch plans.ö The Whaley Plaintiffs further agree that consolidation will promote judicial efficiency and prevent duplication of effort. Accordingly, the Whaley Plaintiffs consent to Plaintiff Lupp's motion for consolidation, ECF No. 21, filed in the Lupp Action.

Defendants in the Whaley Action and Lupp Action also consent to the motion for consolidation. ECF No. 20 at ¶ 2 in Lupp Action; ECF No. 25 at ¶ 2 in the Whaley Action.

RESPECTFULLY SUBMITTED this 14th day of July, 2016.

GARY, NAEGELE & THEADO, LLC

/s/ Thomas R. Theado

Thomas R. Theado, Esq.
TTheado@GNTLaw.com
401 Broadway Avenue, Unit 104
Lorain, Ohio 44052-1745
Tel.: (440) 320-8652
Fax: (440) 244-3462

**COHEN MILSTEIN SELLERS
& TOLL, PLLC**

Karen L. Handorf, *admitted pro hac vice*
khandorf@cohenmilstein.com
Michelle Yau, *admitted pro hac vice*
myau@cohenmilstein.com
Scott Lempert, *admitted pro hac vice*
slempert@cohenmilstein.com
Jamie Bowers, *admitted pro hac vice*

jbowers@cohenmilstein.com
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

KELLER ROHRBACK L.L.P.

Lynn Lincoln Sarko
lsarko@kellerrohrback.com
Laura R. Gerber
lgerber@kellerrohrback.com
Havila Unrein
hunrein@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Tel.: (206) 623-1900
Fax: (206) 623-3384

KELLER ROHRBACK L.L.P.

Ron Kilgard
rkilgard@kellerrohrback.com
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Tel.: (602) 248-0088
Fax: (602) 248-2822

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2016, I electronically filed the foregoing with the Clerk of the Court using the ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system, which counsel may access this filing through the Court's system.

/s/ Thomas R. Theado

Thomas R. Theado, An Attorney for Whaley Plaintiffs